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PD-0710-18  
COURT OF CRIMINAL APPEALS  
AUSTIN, TEXAS  
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February 27, 2019

Court of Criminal Appeals  
Austin, Texas  
Via efile

RE: Court of Criminal Appeals Cause Number: PD-0710-18  
Trial Court Case Number: 2016-419-C1

STYLE: Delafuente v. State

To the Honorable Court of Criminal Appeals:

On January 28, 2019 the State received Petitioner's brief on the merits in this case. The State has reviewed the brief by the Petitioner and is in agreement that the case should be remanded to the 10<sup>th</sup> Court of Appeals in light of this Court's decision in *Smith v. State*, 559 S.W.3d 527, 531 (Tex. Crim. App. 2018). Therefore, the State declines the opportunity to submit a formal brief in the matter. However, the State did feel that it was necessary to clarify for this Honorable Court that the opinion from the Tenth Court of Appeals was decided three months prior to the decision in *Smith* and therefore the Tenth Court of Appeals did not have the benefit of that decision. Any criticism by Petitioner of the Tenth Court of Appeals' decision in this case for their failure to follow *Smith* is unwarranted. With that said, the State of Texas does not oppose the request to remand this case to the lower court.

Respectfully submitted,

/S/ Gabriel Price

Gabriel Price,  
Assistant District Attorney

Cc: Robert Callahan, Attorney for Applicant, via efile, State Prosecuting Attorney's Office